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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/019,769	10/19/2001	Takashi Onishi	1320-01	1861

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IP DEPARTMENT OF PIPER RUDNICK LLP  
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PHILADELPHIA, PA 19103

EXAMINER

EINSMANN, MARGARET V

ART UNIT	PAPER NUMBER
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1751

DATE MAILED: 09/10/2003

Please find below and/or attached an Office communication concerning this application or proceeding.

# Office Action Summary

Application No.

10/019,769

Applicant(s)

ONISHI ET AL.

Examiner

Margaret Einsmann

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-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

## Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133).
- Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

## Status

- 1) ☐ Responsive to communication(s) filed on \_\_\_\_.
- 2a) ☐ This action is **FINAL**. 2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

## Disposition of Claims

- 4) ☐ Claim(s) 1-23 is/are pending in the application.
- 4a) Of the above claim(s) \_\_\_\_ is/are withdrawn from consideration.
- 5) ☐ Claim(s) \_\_\_\_ is/are allowed.
- 6) ☐ Claim(s) 1-23 is/are rejected.
- 7) ☐ Claim(s) \_\_\_\_ is/are objected to.
- 8) ☐ Claim(s) \_\_\_\_ are subject to restriction and/or election requirement.

## Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on \_\_\_\_ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.
- Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
- 11) ☐ The proposed drawing correction filed on \_\_\_\_ is: a) ☐ approved b) ☐ disapproved by the Examiner.
- If approved, corrected drawings are required in reply to this Office action.
- 12) ☐ The oath or declaration is objected to by the Examiner.

## Priority under 35 U.S.C. §§ 119 and 120

- 13) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some \* c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
2. ☐ Certified copies of the priority documents have been received in Application No. \_\_\_\_.
3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).
- \* See the attached detailed Office action for a list of the certified copies not received.
- 14) ☐ Acknowledgment is made of a claim for domestic priority under 35 U.S.C. § 119(e) (to a provisional application).
- a) ☐ The translation of the foreign language provisional application has been received.
- 15) ☐ Acknowledgment is made of a claim for domestic priority under 35 U.S.C. §§ 120 and/or 121.

## Attachment(s)

- 1) ☒ Notice of References Cited (PTO-892)
- 2) ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948)
- 3) ☐ Information Disclosure Statement(s) (PTO-1449) Paper No(s) \_\_\_\_.
- 4) ☐ Interview Summary (PTO-413) Paper No(s) \_\_\_\_.
- 5) ☐ Notice of Informal Patent Application (PTO-152)
- 6) ☐ Other:

**DETAILED ACTION**

***Claim Rejections - 35 USC § 112***

The following is a quotation of the second paragraph of 35 U.S.C. 112:

The specification shall conclude with one or more claims particularly pointing out and distinctly claiming the subject matter which the applicant regards as his invention.

Claims 1-11, 13-23 are rejected under 35 U.S.C. 112, second paragraph, as being indefinite for failing to particularly point out and distinctly claim the subject matter which applicant regards as the invention. Claims are indefinite for being defined by their physical properties alone. The court has held that compositions are indefinite for being defined in terms of properties alone. *Ex parte Spacht* 165 USPQ 409 (PO BdPatApp 1969); *Ex parte Slob* 157 USPQ 172 (PO bdPatApp 1967); *Ex parte Pulvari* 157 USPQ 169 (PO BdPatApp 1966). They must be defined by their composition. Since all of the clothing described in the specification comprises polyethylene terephthalate fibers, the examiner suggests that applicant insert "polyethylene terephthalate" before "woven" on lines one and two of claim 1.

Additionally, when a property is defined by an industry standard, said standard must be specifically recited by name in the claim. Claim 1 should include the language from page 4 last paragraph, "expressed in grey scale for assessing change in color specified in JIS L0804" Additionally, a copy of the literature teaching how said Japanese standard is measured must be placed in the file.

Regarding claims 4-6, that standard must also be placed in the file along with an explanation of how it is used.

There is no explanation of the meaning of "denim-like clothing" which appears in all of the claims.

***Claim Rejections - 35 USC § 103***

The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

Claims 1-3,8-17 and 19 are rejected under 35 U.S.C. 103(a) as being unpatentable over Hayashi et al., US 4,367,070.

Hayashi et al disclose the formation of ultrafine fibers comprising matrix-core fibers as claimed. (See figures 1-12 and explanations thereof) Clothing is formed from said fibers and dyed. The fibrous structures include yarns, woven fabrics, knitted fabrics and non-woven fabrics. (Col 1 lines 65-68). Example 1 (col 4 lines 30 et seq) discloses a process of dyeing a taffeta fabric which has been woven of islands-in-the – sea fibers, which are fibers that are capable of forming ultrafine fibers on its surface.

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Said fibers are formed from polyethylene terephthalate fibers and fibers of polyethylene terephthalate copolymerized with 4 molar % of 5-(sodium sulfo) isophthalic acid. The fabric was treated with sulfuric acid solution and then sodium hydroxide solution to remove the sulfo containing component and thus form ultrafine fibers of PET. The fabric was dyed conventionally and had a mild color tone.

The reference differs from the instant claims in that there is no statement that the fabric is "denim-like." It would have been obvious to the skilled artisan that the taffeta fabric dyed by the process of claim 1 has a whiteness index of less than or equal to Class 4 because applicant states in the specification that whiteness is the difference in color before and after formation of ultrafine fibers and that 5 indicates white. In this example, there is a hue difference before and after formation of the ultrafine fibers because before formation the taffeta was undyed and after formation and dyeing the fibers were a "mild color tone" which indicates that they were not white. Accordingly the whiteness value must meet the limitation of less than or equal to Class 4.

### ***Claim Rejections - 35 USC § 102***

The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless –

(b) the invention was patented or described in a printed publication in this or a foreign country or in public use or on sale in this country, more than one year prior to the date of application for patent in the United States.

Claim 1-10, 19 and 20 are rejected under 35 U.S.C. 102(b) as being anticipated by Beaty et al., US 5,870,807. A process of fibrillating lyocell is disclosed. Fibrillation is the formation of micro-fibrils on the surface of fibers as a result of mechanical

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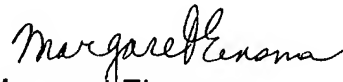
abrading or splitting the fiber. See col 1 lines 35-42. Denim garments comprising lyocell which has been fibrillated to produce microfibrils on the surface are disclosed in the description beginning in column 13 line 37. The garments produced are not only "denim-like" but are denim. The denim garments comprising fibrillated lyocell as disclosed in column 13 inherently meet the whitening index and roughness index as claimed absent evidence otherwise. Regarding the limitation of claim 19, patentee states that there is consequently lessening of abrasion and color loss. The garments must have been previously colored in order to lose color. Regarding claim 20, the process of Beaty, impacting the substrate with a plurality of jet streams is a flexing and rubbing process.

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Margaret Einsmann whose telephone number is 703-308-3826. The examiner can normally be reached on 7:00 AM -4:30 PM M-Th and alternate Fridays.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Yogendra Gupta can be reached on 703-308-4708. The fax phone numbers for the organization where this application or proceeding is assigned are 703-872-9310 for regular communications and 703-872-9311 for After Final communications.

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Any inquiry of a general nature or relating to the status of this application or proceeding should be directed to the receptionist whose telephone number is 703-308-0661.

  
Margaret Einsmann  
Primary Examiner  
Art Unit 1751

September 4, 2003